be reached. But a further point arises as to jurisdiction, because if the house were found to be movable, then the question would arise as to the value of the subject matter of the action. Where immovable property is concerned sub-section (3) of Section 70 limits the jurisdiction by reference to the amount of the money claim or the amount of the rent, but in my opinion this sub-section has no bearing upon an action relating to movable property. In an action to recover possession of immovable property what is in issue is the right to possession, the value of which it is almost impossible to assess. But where the claim is in respect of a movable or chattel that claim is in effect to recover the chattel so that the chattel is the subject matter of the action. A movable house can be sold and taken away by the purchaser; but an immovable house cannot be sold apart from the land — only the lease or right to possession can be bought or sold. So that if the house in question is a movable then the claim in the action is for the recovery of a movable and the subject matter of the action is in my opinion the value of that movable. It is clear from the evidence in this case that whether the appellant's or the respondent's view of the value of the house is accepted that value is considerably more than $1,000. Under Section 90 of the Courts Ordinance therefore the Magistrate's Court would have no jurisdiction to try the case.

The result in my opinion, therefore, is that if the house is immovable property the Magistrate had no jurisdiction because of the dispute as to title; and if the house is movable property the Magistrate had no jurisdiction because the subject matter of the action was over $1,000, so that jurisdiction was lacking upon either view.

I must hold, therefore, that as the learned Magistrate had no jurisdiction the proceedings were a nullity and his judgment is of no effect upon the rights of the parties except perhaps as to costs.

One final point must be disposed of. At the conclusion of the hearing the learned Magistrate ordered that the documents be impounded and kept in the archives of the Court. The tenth ground of appeal was to the effect that he had no jurisdiction to do this. Mr. Abdoolcader submitted that whatever might be my decision upon the main grounds of appeal the order of the Court below impounding the documents must be rescinded. With this submission I agree. I can find no provision of the Subordinate Courts Rules which gives power to impound documents. Order 19 rule 8 provides that the Court may for sufficient reason order that any document produced in any proceedings be sent to the Public Prosecutor or the Collector of Stamp Duties or their deputies but says nothing about impounding. That part of the learned Magistrate's order which dealt with impounding the documents must, therefore, be set aside.

I will hear further argument as to the costs of the appeal and the costs in the Court below.

Order accordingly.

Solicitors for the appellant: *Ong Huck Lim & Co.*

KWEK KIM HOCK v. ONG BOON SIONG

[A. C. J. (Taylor J.) November 30, 1954]

[Singapore — District Court Appeal No. 32 of 1954]

Landlord and tenant — Control of Rent Ordinance, 1953, s. 15(1)(g), (i) & (k) — Meaning of "premises" — Separate ownership of land and building — Whether a semi-permanent building can be "of temporary character".

This was an appeal from a decision of the District Court, dismissing an action for possession. The defendant had let a vacant shop lot from the landlord and with his consent had erected a wooden building on a concrete platform. Subsequently the plaintiff bought the land with full knowledge of the circumstances from the landlord. At the trial possession was claimed under four different provisions of the Control of Rent Ordinance: (1) that the rent was in arrears; (2) that the defendant had sublet portions for an aggregate return, greatly exceeding the rent paid by him to the plaintiff; (3) that demolition is necessary in the interest of town improvement: (4) that the premises consist of a temporary building and that the plaintiff required the site to erect a permanent building for which plans had been approved. The first ground was dropped at the appeal.

Held: (1) as in this case the defendant was the owner of the building and entitled to let portions of it, it would be impossible to apply para. (g) of s. 15(1) of the Control of Rent Ordinance to the circumstances of the case unless the rent actually paid by the occupants can be apportioned by the Court, so much for the site and so much for the building and as the plaintiff could not attempt such an apportionment in this case, a case under para. (g) could not be established; (2) where it is sought to rely on s. 15(1)(k) of the Control of Rent Ordinance which enables a landlord to recover possession where demolition is necessary in the interest of town planning there must be evidence of a scheme made or approved by a local authority, affecting the site in relation to other sites; (3) the provisions of s. 15(1)(i) of the Control of Rent Ordinance can apply where the land and the building are separately owned, as a house can for this purpose be regarded as part of the premises; (4) the building in this case was a semi-permanent building but was nevertheless of a temporary character for the purpose of the Ordinance and therefore the plaintiff could recover possession of the site under s. 15(1)(i) of the Control of Rent Ordinance.

Case referred to:—

(1) *Indo-Australian Trading Co. v. Png Lam Chua* (1954) M.L.J. 155.

APPEAL against dismissal of Action for possession.

K. E. Hilborne for the appellant.

A. N. Mitra for the respondent.

Cur. Adv. Vult.

Taylor J. : — This is an appeal from a decision of the District Court, dismissing an action for possession of No. 79, Syed Alwi Road. The facts shortly are these. Two shop lots, Nos. 79 and 80, Syed Alwi Road were vacant. The landlord let No. 79 to the defendant at $6 a month. The defendant, with the assent of the landlord, erected at his own expense a wooden building on a concrete platform. Later the plaintiff bought the land with full knowledge of the circumstances. The building contains a shop and two or three apartments which are let separately as residential quarters. The defendant at one time used the shop himself but removed several years ago. The total rents received by him are $85 a month. The occupants in fact use the vacant site of No. 80 as a courtyard for drying clothes and the like, though that was never let to the defendant, and is not let to them. The plaintiff desires to build two shop houses of modern type, with flats over them, and his plans were approved by the City Council in 1953. The plaintiff gave the defendant notice to quit; the defendant refused to quit and the action was brought.

Possession was claimed under four different provisions of the Control of Rent Ordinance. The first was that rent was in arrears but this was incorrect and was dropped. The second was that the defendant had sub-let portions for an aggregate return, greatly exceeding the rent paid by him to the plaintiff. Paragraph (g) of Section 15 provides that where the tenant sub-lets the premises and receives more than 11 tenths of the rent paid by him, the landlord may recover possession. This provision applies generally to the case where the landlord lets a house to a chief tenant. The question here is whether it also applies to the less usual case where the landlord lets vacant land and the tenant erects a building at his own expense. Counsel for the plaintiff questioned the proposition that land and a building on it can be owned separately, the landlord owning the land only and the tenant owning the building, so that if the tenant receives a valid notice to quit he may dismantle the building and re-erect it elsewhere. This is a common incident in the country districts of Malaya and is a well-established variation from the principle of English law that a building becomes the property of the owner of the land. The question is whether, on its true construction, the Ordinance recognises separate ownership. This turns on the definition of "premises" which, if it were split into paragraphs and if words not now material were omitted, would read :—

"Premises" means:—

(1) Any house, office or shop;

(2) Any other building, permanent or temporary, used as a work-room and

(3) Any land on which any such building is, or has been erected with the consent of the landlord.

The third paragraph expressly contemplates the case where the landlord is not the true owner of the building. The landlord who gives the consent must be the landlord at the time when consent is given.

One cannot effectively let a building without in fact letting the site on which the building stands. From the point of view of the occupier it is all one but from the point of view of the party letting there may be two aspects. In point of law the defendant in this case, though not the landlord of the site, is the owner of the building. He has sub-let parts of the land in conjunction with original lettings, not sub-lettings, of parts of the building. It is impossible to apply paragraph (g) to these circumstances unless the rent actually paid by the occupants can be apportioned by the Court, so much for the site and so much for the building, and the proportion of the rent attributable to the site exceeds 11 tenths of the ground rent. Such an apportionment would rarely be practicable and Counsel for the landlord admitted that he could not attempt such an apportionment on the facts of this case. It follows that ground (g) cannot be established. I would add that in my opinion the plaintiff, having purchased with full knowledge, could not in any event succeed under this paragraph unless his vendor could have succeeded. That would involve the proposition that a landlord could let a site for $6 a month, consent to the tenant building a valuable building at his own expense and, a month later, put the tenant in the position that he may not let a portion of his own property at a fair rent. That would be an unjust position.

The next ground was under paragraph (k) which enables a landlord to recover possession where demolition is necessary in the interests of town improvement. The District Judge held that the scheme did not amount to town improvement. On appeal it was suggested that there is a recent local decision on this question. The Chief Justice informs me that the point was taken before him in the course of a case which he decided on another issue and so far as we know there is no local authority on the point.

In one sense any replacement of a poor building by a better one may be thought an improvement to the town, but in this context the expression conveys the idea of town planning. There need not be a general town plan. It might be no more than a building line for one street but there must be a scheme, made or

approved by a local authority, affecting the site in relation to other sites. On this issue the appeal fails.

The last ground was under paragraph (i) and alleged that the premises consist of a temporary building and that the plaintiff requires the site to erect a permanent building for which plans have been approved. At the trial it was discovered that the plans were approved a year and a day before the institution of the suit and it was said that the plans had lapsed. Strictly speaking, approved plans do not lapse but it is illegal to commence construction more than a year after the date of approval. It is not necessary to submit new plans; they can be re-approved for a small fee and this is not infrequently done. I agree with the District Judge that the word "approved" should be construed as "effectively approved", otherwise a man might do nothing for several years and then claim possession on a stale scheme, but where approval is recent and renewal is likely to be granted, and if there is no other difficulty so that the decision of the case turns on that point, justice requires that a short adjournment should be granted, on terms, to enable a plaintiff to obtain renewal.

That, however, is not the only point arising under paragraph (i) in this case. The question arises whether this provision covers the case where the land and the building are separately owned. As I have said, when dealing with paragraph (g) the land and the building are to be considered as distinct and separate subject matter for some purposes but not for all. As the land was vacant when let, the house is, in one sense, not comprised in the tenancy. Neverthless the house, as it now stands, is in another sense, part of the premises let. In view of the proviso I think the paragraph covers such a case as the present one.

This application of the definition of "premises" to paragraph (i) may appear not wholly consistent with the foregoing application of the same definition to paragraph (g). Section 2, however, expressly provides that the definition is subject to the context; it may therefore bear a slightly different construction if that is necessary in order to give full effect to different substantive provisions. I am therefore of opinion that a case of separate ownership may fall within the scope of paragraph (i).

The next point is whether the building in question is "of a temporary character." An architect described the building as temporary and he was not cross-examined but the question is not one of pure fact, it is a question of mixed fact and law. The witness cannot decide the issue. From the architectural and engineering points of view buildings are of three kinds: — permanent, semi-permanent and temporary. The nature of the roof has nothing to do with the matter. No one has yet discovered a permanent roofing material and many famous ancient and undoubtedly permanent buildings have thatched roofs. A building wholly of attap on a frame of jungle poles stuck in the ground could easily be made to last indefinitely by piece-meal repair but I think it would always be a temporary building. By "semi-permanent" an engineer usually means a building with a frame of hard timber set on brick pillars, or on a concrete foundation or at least on wooden piles set in concrete sockets. The Ordinance however, divides buildings into two classes, not three, and therefore the question arises whether a semi-permanent building is temporary or permanent for the purposes of the Ordinance.

In some cases at least this is a question of intention, *Indo-Australian Trading Co. v. Png Lam Chua*[1]. The evidence shows that this building is, in the constructional sense, semi-permanent. Such buildings may be of a temporary character, for the purposes of the Ordinance, according to the intention of the parties and all the other circumstances and the proviso expressly enables adjustments to be made to prevent hardship in doubtful or marginal cases.

On the whole I have come to the conclusion that this is such a case and that the plaintiff should be allowed to recover possession on condition that he makes reasonable compensation to the defendant for what is tantamount to expropriation. The difficulty of finding another site is very much greater than it would be in a rural area.

By his statement of claim the plaintiff expressly sought possession of the building, not of the site only, and no offer of compensation was ever made. This was an excessive claim. The appeal succeeds in part only. Judgment must be entered for the plaintiff for recovery of the site only, with a declaration that the defendant is entitled to dismantle the building and remove, re-erect or dispose of the materials at his will.

In order to avoid remitting the case to the District Court, and as any award of compensation can, at best, be but a rough estimate I assess the amount at $1,000. In doing so I have allowed for rent in arrears and future rent so there will be nothing to off-set. The judgment must lie in the Registry until the plaintiff produces the plan, reapproved, or a new approved plan.

Execution by process for possession will be stayed until the end of the sixth month which commences after service of the judgment on the defendant and also until the plaintiff has paid $1,000 to the defendant.

As the sub-tenants have not been served, or heard, the judgment will not be enforceable as against them and a declaration to that effect must be embodied pursuant to Section 26.

As both parties have succeeded in part they should bear their own costs throughout.

Order accordingly.

Solicitors : *Hilborne & Murphy; S. C. Goho & Co.*

V. SOLAI v. MARIAYEE

[O. C. J. (Bellamy J.) October 15, 1954]

[K. L. — Civil Suit No. 20 of 1954]

Guardianship of infant — Procedure — Whether proceedings by way of Originating Summons or Suit — Civil Law Enactment, 1937, s. 6(i) — Guardianship of Infants Acts, 1886 & 1925 — Religion and customs of parties.

The plaintiff, a Hindu father, instituted this suit for an order for the custody of his 2 infant children alleged to be detained by his Hindu wife. A question of procedure arose as to whether proceedings of the kind ought to be taken by way of Originating Summons and not by a Suit.

Held: (1) there being no other written law which applies in the Malay States regarding the religion and customs of parties concerned, the Guardianship of Infants Acts must be followed; (2) the proper procedure where there is no action or other proceedings pending is for an application to be made by Originating Summons in the matter of the infants.

CIVIL SUIT.

Both parties in person.

Cur. Adv. Vult.

Bellamy J. : — This is a suit instituted by a Hindu father for an order for the custody of his two infant children alleged to be detained by the defendant, a Hindu woman, who is the plaintiff's wife and the mother of the children.

A question of procedure (upon which, as far as I am aware, there has been no reported decision in this Court although the question must have arisen before) immediately arises whether proceedings of the kind must be taken by way of originating summons under section 472 of the Federated Malay States Civil Procedure Code and not by a suit.

The answer is, I think, to be found in section 6(i) of the Civil Law Enactment, 1937 which provides :—

"In all cases relating to the custody and control of infants the law to be administered shall be the same as would have been administered in like cases in England at the commencement of this enactment regard being had to the religion and customs of the parties concerned unless in any case other provision is or shall be made by any written law."

There is no other written law which applies in the Malay States, and it follows that English law as it was at the 12th March, 1937, the date of the commencement of the Civil Law Enactment, 1937, applies to such cases.

The relevant English law is to be found in the Guardianship of Infants Acts, 1886 and 1925. Under these Acts applications are made to the Court in the manner laid down by rules made under the Guardianship of Infants Act, 1886 (section 11); and the procedure is governed in the High Court by Order 55, rule 2(12) and Order 55A of the Rules of the Supreme Court. Order 55A admits of any application either under the Act of 1886 or under the Act of 1925 by an originating summons in the matter of the infant where there is no action of other proceeding pending. It does not appear to admit of any such proceeding being taken by a suit.

In my view, therefore, no suit will lie here for the custody of an infant. The proper procedure, where there is no action or other proceedings pending (as in this case), is for an application to be made by originating summons in the matter of the infant. It will be noted that this procedure is in line with the procedure in the Settlements where under the Guardianship of Infants Ordinance (Chapter 50) of the Straits Settlements the procedure is regulated by Order 52, rule 23 of the Rules of the Supreme Court, 1934, clause (1) of which is taken from the English Order 55A, rule 2.

It follows that in my view these proceedings have been misconceived. The suit is dismissed, with costs, without prejudice to any further proceedings which the father might take in proper form.

Suit dismissed.

GNG ENG HWOO v. REGINA

[A. Cr. J. (Whitton J.) October 15, 1954]

[Singapore — Magistrate's Appeal No. 148 of 1954]

Dangerous Drugs Ordinance, 1951, s. 30(7) — Meaning of "owner" — Criminal Procedure Code (Cap. 21), s. 296 — Order — Whether Magistrate's ruling as to ownership within s. 30(7) Dangerous Drugs Ordinance amounts to an order.

In this case the proceedings started with the prosecution of another Chinese for alleged unlawful possession on board the motor sampan of raw opium in contravention of the Dangerous Drugs Ordinance. That Chinese was acquitted but the Magistrate held that an offence under the Ordinance had been committed, and under s. 30(3) asked the owner to show cause why the vessel should not be forfeited. After hearing the evidence of